Chapter 90

VEGETATION*

Sec. 90.100. Penalties.

Sec. 90.101. Control of weeds, grasses, brush.

Sec. 90.102. Protection of elm trees.

Sec. 90.103. Protection of trees and shrubs.

^{*} Cross References--Mobile homes, ch. 46; planning commission, ch. 62; streets, sidewalks and other public places, ch. 70; subdivision regulations, ch. 74; zoning, ch. 94.

State Law References--Nuisance weeds generally, Wis. Stats. § 66.955; noxious weeds generally, Wis. Stats. § 66.96.

Sec. 90.100. Penalties.

Except where other penalties have been specifically provided under other sections of this chapter, any person violating any of the provisions of this chapter or failing to perform or obstructing the performance of any duties prescribed in this chapter shall be subject to section 1.112.

(Code 1982, § 6.14)

Sec. 90.101. Control of weeds, grasses, brush.

(a) *Definitions*. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Noxious weeds includes Canada thistle, leafy spurge, field bind weed (creeping jenny), goldenrod, bull thistle, poison ivy, poison sumac and poison oak.

- (b) Control of noxious weeds. No person owning property within the village shall permit to grow or pollinate upon his premises any weeds, grasses or brush that causes or produces or exhales unpleasant or noxious odors or may conceal filthy deposits or provide a place for the accumulation of trash or litter. In addition, the existence of noxious weeds upon any property within the village is prohibited. Every person shall destroy all noxious weeds on all lands which he shall own, occupy or control. The person having immediate charge of any public lands shall destroy all noxious weeds on such lands, which means the complete killing of weeds or the killing of weed plants above the surface of the ground exceeding one foot in height by use of chemicals, cutting, tillage, cropping system, pasturing livestock or any or all of these in effective combination at such time and in such manner as will effectively prevent such plants from maturing to the bloom or flower stage.
- (c) *Destruction by village*. It shall be the duty of the weed commissioner to enforce this section; and if any person shall fail to comply with this section, the commissioner shall, after ten days' written notice to the owner, cause the premises to be mowed and cleared of noxious weeds and grasses and report the cost in writing to the village clerk/treasurer in the manner provided in Wis. Stats. § 66.98. Such charge shall be spread on the tax roll as a special tax to be collected in the manner as other taxes unless such lands are exempt from taxation.

(Code 1982, § 6.135; Ord. of 3-6-2000, § 1, Ord. of 3-6-2000 § 1)

Sec. 90.102. Protection of elm trees.

(a) *Definitions*. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Public nuisance means:

- (1) Dutch elm disease.
- (2) Elm bark beetles Scolytus multistriatus or Hylurgopinus rufipes.
- (3) Any living or standing elm tree infected with the Dutch elm disease fungus or in a weakened condition that harbors any of the elm bark beetles, Scolytus multistriatus or Hylurgopinus rufipes.
- (4) Any dead elm tree, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying concentrate.

Public property means premises owned or controlled by the village, including without limitation because of enumeration, public sites, parks, playgrounds, streets, alleys, sidewalks, boulevards and the terrace strip between the lot line and curb or improved portion of any public way.

- (b) Intent and purpose. Whereas the board has determined that there are many elm trees growing on public and private premises within the village, the loss of which would substantially depreciate the value of public and private property, impair the use and enjoyment of public and private premises and erode the tax base of the village, and that the health and life of such trees is threatened by a fatal disease known as Dutch elm disease, which is spread by the elm bark beetles Scolytus multistriatus or Hylurgopinus rufipes, the board declares its intention to control and prevent the spread of such disease and the insect pests and vectors that carry such disease and declares Dutch elm disease and the elm bark beetles that carry such disease to be public nuisances.
- (c) *Enforcement*. The weed commissioner shall carry out the provisions of this section. He may perform the duties of forester under Wis. Stats. ch. 27, and the weed commissioner is empowered to perform the duties and exercise the powers imposed on the board by this section.
 - (d) Inspection.
 - (1) The weed commissioner shall inspect or cause to be inspected at least twice each year

all premises and places within the village to determine whether any public nuisance

exists. He shall also inspect or cause the inspection of any elm tree reported or

suspected to be infected with the Dutch elm disease or any elm bark bearing material

reported or suspected to be infested with elm bark beetles.

(2) Whenever necessary to determine the existence of Dutch elm disease or elm bark

beetles in any tree, the person inspecting such tree shall remove or cut specimens from

the tree in such manner as to avoid permanent injury thereto and deliver such specimens to the weed commissioner who shall forward them to the department of

agriculture for analysis to determine the presence of such nuisances.

(3) The weed commissioner and his agents or employes shall have authority to enter upon

private premises at reasonable times for the purpose of carrying out any of the provisions of this section.

- (e) Abatement of nuisances; duty of weed commissioner.
- (1) The weed commissioner shall order, direct, supervise and control the abatement of

public nuisances as defined in this section by spraying, removal, burning or by other

means determined to be necessary to prevent as fully as possible, the spread of Dutch

elm disease fungus or the insect pests or vectors known to carry such disease fungus.

(2) Whenever the weed commissioner, after inspection or examination, shall determine that

a public nuisance exists on public property in the village, the weed commissioner shall

immediately abate or cause the abatement of such nuisance in such manner as to

destroy or prevent as fully as possible the spread of Dutch elm disease or the insect

pests or vectors known to carry such disease fungus.

(3) a.

When the weed commissioner shall determine with reasonable certainty that a public nuisance exists upon private premises (or upon the terrace strip between the lot line and the curb), the weed commissioner shall immediately serve or cause to be served personally or by registered mail upon the owner of such property (or the abutting property), if such owner can be found, or upon the occupant, a written notice of the existence of such nuisance and of a time and place for a hearing, not less than 14 days after service of such notice, on the abatement action to be taken. Such notice shall describe the nuisance and recommend procedures for its abatement, and shall further state that unless the owner shall abate the nuisance in the manner specified in the notice, or shall appear at the hearing to show that such nuisance does not exist or does not endanger the health of elm trees in the village, the weed commissioner shall cause the abatement at the expense of the property served (or abutting property). If the owner cannot be found, such notice shall be given by publication in a newspaper of general circulation in the village.

b. If after hearing held pursuant to this subsection it shall be determined by the weed

commissioner that a public nuisance exists, the weed commissioner shall forthwith

order its immediate abatement. Unless the property owner abates the nuisance as

directed within 24 hours after such hearing, the weed commissioner shall proceed to

abate the nuisance and cause the cost to be assessed against the property in accordance

with the procedures provided in this section. The weed commissioner may extend the

time allowed the property owner for abatement work but not to exceed ten additional

days.

- (f) Spraying.
- (1) Whenever the weed commissioner shall determine that any elm tree is infected with

Dutch elm disease fungus or is in a weakened condition and harbors elm bark beetles.

he may cause all elm trees within a 1,000-foot radius to be sprayed with an effective

elm bark beetle destroying concentrate.

(2) In order to facilitate the work and minimize the inconvenience to the public of any

spraying operations conducted under this section, the weed commissioner shall cause to

be given advance public notice of such operations by newspaper, radio, television,

public service announcements or other effective means and shall also cause the posting

of appropriate warning notices in the areas and along the streets where trees are to be

sprayed at least 24 hours in advance of spraying. When any residue or concentrate from

municipal spraying operations can be expected to be deposited on any public street, the

weed commissioner shall also notify the chief of police, who shall take all necessary

steps to make and enforce temporary parking and traffic regulations on such streets as

conditions require. Temporary "no parking" notices shall be posted in each block of any

affected street at least 24 hours in advance of spraying operation.

- (3) When appropriate warning notices and temporary "no parking" notices have been given
 - and posted in accordance with subsection (f)(2) of this section, the village shall not
 - allow any claim for damages to any vehicle caused by such spraying operations.
- (4) When trees on private property are to be sprayed, the weed commissioner shall notify

the owner of such property and proceed in accordance with the requirements of

subsection (f)(3).

- (g) Cost of tree care; special assessments.
- (1) The cost of abatement of a public nuisance or spraying elm trees or elm wood at the

direction of the weed commissioner if the nuisance, tree or wood is located on public

property, shall be borne by the village (except the cost of abating a public nuisance or

spraying elm trees or elm wood located on the terrace strip between the lot line and the

curb shall be assessed to the abutting property).

(2) The cost of abating a public nuisance or spraying elm trees or elm wood located on

private premises when done at the direction and under the supervision of the weed

commissioner shall be assessed to the property on which such nuisance, tree or wood is

located as follows:

a. The weed commissioner shall keep a strict account of the cost of such work or

spraying and the amount chargeable to each lot or parcel and shall report such work,

charges, description of lands to which charged, and names and addresses of the

owners of such lands to the board on or before October 15 of each year.

b. Upon receiving the weed commissioner's report, the board shall hold a public hearing

on such proposed charges, giving at least 14 days' advance notice of the time, place

and purpose of such hearing to interested persons by publication in a newspaper of

general circulation in the village and by mail to the owner of each property proposed

to be charged. Each property owner shall be notified of the amount proposed to be

assessed against his premises and the work for which such charge is being made.

c. After the hearing, the board shall affirm, modify and affirm or disapprove such

assessments by resolution and shall cause a copy to be published. Upon adoption and

publication of such resolution, assessments made shall be deemed final.

d. The village clerk/treasurer shall mail notice of the amount of such final assessment to

each owner of property assessed at his last known address, stating that unless paid

within 30 days after the date of the notice, such assessment shall bear interest at the

rate of six percent per annum and will be entered on the tax roll as a delinquent tax

against the property, and all proceedings in relation to the collection, return and sale of

property for delinquent real estate taxes shall apply in such assessment.

e. The board declares that in making assessments under this section it is acting under its

police power, and no damages shall be awarded to any owner for the destruction of

any diseased or infested elm tree or elm wood.

- (h) *Prohibited acts and penalties*. Any person who does any of the following acts within the village shall upon conviction be subject to section 1.112:
 - Transports any bark-bearing elm wood, bark or material on public streets or highways or other public premises without first securing the written permission of the weed commissioner.
 - (2) Interferes with or prevents any acts of the weed commissioner or the commissioner's agents or employes while they are engaged in the performance of duties imposed by this section.
 - (3) Refuses to permit the weed commissioner or the commissioner's duly authorized representative to enter upon such person's premises at reasonable times to exercise the duties imposed by this section.
 - (4) Permits any public nuisance to remain on any premises owned or controlled by such person when ordered by the weed commissioner to abate such nuisance.

(Code 1982, § 6.1355)

Sec. 90.103. Protection of Trees and Shrubs

- (a) *Intent and Purpose*. It is the policy of the Village of Weston to regulate and establish policy for the control of planting, removal, maintenance and protection of trees and shrubs in the Village (See Sec. 94.136 & Sec. 94.137):
 - (1) Eliminate and guard against dangerous conditions which may result in injury to persons using the streets, sidewalks, or other public areas of the Village;
 - (2) Promote and enhance the beauty and general welfare of the Village;

- (3) Prohibit the undesirable and unsafe planting, removal, treatment and maintenance of trees and shrubs located in public areas;
- (4) Guard all trees and shrubs, both public and private, within the Village against the spread of disease, insects, or pests; and
- (5) To prevent damage to any public sewer or water main, street, sidewalk, or other public property.
- (b) Applicability. This article shall apply to tree and shrubs growing or planted after the effective date of the ordinance from which this section is derived in or upon public areas and also to all trees and shrubs growing or to be planted in or upon any private premises which shall threaten the life, safety, or welfare of the public, public areas, or trees within either public or private areas.
- (c) *Village Board*. The Village Board or Village Arborist is empowered to require landowners to remove, prune, or treat specified trees, shrubs, or plants under certain conditions and to prohibit the planting of certain trees or tree species, shrubs, or plants on private lands within the Village (See Sec. 94.137).
- (d) Adoption of State Statutes. Wis. Stats. §§ 27.09 and 86.03 are adopted and incorporated in this article by reference.
- (e) *Definitions*. Whenever the following words or terms are used in this article, they shall be construed to have the following meanings:
 - (1) Boulevard areas mean the land between the normal location of the street curbing and sidewalk.
 - (2) Curb means an enclosing frame, border or edging along a street.
 - (3) Dbh (diameter at breast height); represents the diameter in inches of a trunk cross section measured at 4 ½ above ground level; a basis for estimating or identifying tree volume, value, management needs and costs, utilization options, etc.
 - (4) *Evergreen tree* means any woody plant normally having one trunk and bearing foliage in the form of limbs with needles, which may extend from the ground level throughout its entire height.
 - (5) *Flush cut* means pruning a branch even with the trunk. This type of pruning is not suggested as the wound will not callus properly. A

- proper finish cut shall begin at the branch bark ridge and finish just outside of the branch collar.
- (6) *Hazard/Risk Tree* means any tree or part thereof which the Village Arborist upon examination deems as being a safety concern that may endanger the public using Village property or may cause damage to Village property whether growing upon public or private premises; this shall be declared a public nuisance.
- (7) *Median strip* means the dividing area that is landscaped between opposing traffic lanes within a street.
- (8) *Public areas* include all public parks and right-of-ways owned, controlled or leased by the Village.
- (8) *Public nuisance* means any tree or shrub or part thereof which, by reason of its condition, interferes with the use of any public area; is infected with a plant disease; is infested with injurious insects or pests; is injurious to public improvements; or endangers the life, health, safety or welfare of persons, plants, or property.
- (9) *Public trees and shrubs* means all trees and shrubs located or to be planted in or upon public areas.
- (10) *Shrub* means any woody vegetation or woody plant having multiple stems and bearing foliage from the ground up.
- (11) *Topping* also known as rounding over is the practice of indiscriminately cutting limbs, creating stubs regardless of branch juncture. This practice creates a momentarily reduced crown that will respond significantly with more and longer weakly attached limbs, which will create a safety concern, this practice is never acceptable.
- (12) *Tree* means any woody plant, normally having one stem or trunk bearing its foliage or crown well above ground level reaching a mature height of 12 feet or more.
- (13) *Village Arborist* means the person designated by the Village Board as authorized to carry out this article and assure that proper maintenance practices are completed to trees within the Village to

- create a safe and aesthetically pleasing community forest, this person shall be an International Society of Arboriculture Certified Arborist.
- (14) Vision triangle or vision setback area is a clear sight triangle formed by a distance of 30 feet from the intersecting street rights of way and a third line connecting that distance to allow for clear views by persons traveling in vehicles or bicycles on the street.
- (f) Designation of Village Arborist.
 - (1) The Village Board may designate a municipal employee to perform the duties of the Village Arborist under Wis. Stats. § 27.09 and may authorize such Arborist to perform the duties and exercise the powers imposed on the Village Board by this section.
 - (2) Annually the Village Arborist shall perform a risk assessment of all Village street trees and park trees in manicured areas and provide such report and recommendations to the Village Board.
- (g) Abatement of nuisances. The Village Arborist shall order, direct, supervise and control the abatement of public nuisances as defined in this section by treatment, pruning, removal, or by other means which is determined to be necessary to prevent as fully as possible the spread of deleterious tree diseases or the insect pests or vectors known to carry such diseases, thus allowing for a structurally sound and safe community forest.
 - (1) Trees and shrubs on private premises.
 - a. The Village Arborist, after giving advance notice to the owner or tenant, shall have the authority to enter upon and inspect all premises, at reasonable times (7am to 5 pm), within the Village to determine whether any public nuisance exists thereon. If a request to inspect such trees or shrubs is denied by the person responsible for the property, an inspection warrant may be obtained pursuant to Wis. Stats. § 66.0119.
 - b. When the Village Arborist has determined with reasonable certainty that a public nuisance exists upon a private premises, they shall in writing notify the owner or tenant having charge of such premises. Within 2 weeks after the issuance of said

notice, said person shall cause the treatment, pruning, or removal and destruction of said nuisance tree or shrub as directed in the written notice. In case the owner or tenant having charge of such premises shall refuse or neglect to comply with the terms of the written notice after receiving it, they can rebut to the Village Arborist within 2 weeks of receiving the written notice. The Village Arborist shall then cause the treatment, pruning, or removal if risk to life of the said nuisance tree or shrub. The expense shall be entered on the tax roll as a tax against the property which said tree or shrub is located pursuant to Section 27.09(4), (5), (6), and (7) of Wisconsin Statutes.

- (h) *Interference with Arborist*. No person shall interfere with the Village Arborist and their authorized representative while they are engaged in carrying out any work or activities authorized by this article.
 - (i) *Treatment of trees.* Shall be in accordance with the following:
 - (1) Whenever the Village Arborist determines that any tree or shrub or part thereof is infected with a deleterious or fatal tree disease or is in a weakened condition or harbors insects (elm bark beetles, gypsy moth caterpillars, emerald ash borer, etc.), the Village Arborist may cause all trees within the infected area to be treated as they see fit which, may mean injecting, spraying, severing interconnected roots, and or removing parts or whole trees along with other best practices to ensure that transfer of the insect or disease to other trees or plants does not occur.
 - (2) In order to facilitate the work and minimize the inconvenience to the public of any treatments conducted under this section, the Arborist shall give 2 weeks' notice to landowners and or adjacent landowners and shall also post the appropriate warning notices in the areas along the streets where trees are to be treated. The Village shall not allow any claim for damages to any vehicle caused by spraying operations.
 - (3) When trees on private property are to be treated, the Arborist shall notify the owner of such property and proceed in accordance with the requirements of subsection (i) (2) of this section.

- (4) No resident may prune, plant or remove trees on Village property.
- (j) Assessment of costs of abatement.
 - (1) The entire costs to the Village plus a 25% administrative fee for abating any public nuisance or spraying trees shall be charged to and assessed against the parcel or lot abutting on the street, alley, terrace, boulevard or parkway upon or in which such tree is located on or the parcel or lot upon which such tree stands in accordance with Wis. Stats. § 66.0627. The cost of abating any such nuisance or part thereof which is located in or upon any park shall be borne by the village.
 - (2) The cost of abating a public nuisance, when done at the direction and under the supervision of the Arborist, shall be assessed to the property to which such nuisance, tree or wood is located as follows:
 - a. The Arborist shall keep a strict account of the costs of such work or treatment and invoice the lot or parcel. Failure to pay within 60 days of the date of the notice will result in the amount charged to be entered on the tax roll as a tax against the property.
 - b. The Village declares that, in making assessments under this section, it is acting under its police power, and no damages shall be awarded to any owner for the destruction of any diseased or infested tree or wood part thereof.
- (k) *Planting of trees and shrubs.*
 - (1) *Purpose*. The Village Board states its determination that the planting, care and protection of the trees within the Village are desirable for the purpose of beauty, shade, comfort, noise and pollution reduction, storm water control, abatement, and economic betterment and encourages all persons to assist in a program of tree planting, care and protection.
 - (2) *Tree planting program.* The Park and Recreation Committee shall recommend to the Village Board, with approval from the Village Arborist, a program for tree planting, care and protection for the public parks and street right of way. The Village Board shall also encourage

the planting, care and protection of trees and shrubs on private premises within the Village.

- a. General planting techniques.
 - 1. *Ball and burlap trees*. When using this type of root stock the wire basket should be removed to prevent girdling in the future.
 - 2. *Hole width.* Shall be a minimum of twice the tree's root ball width.
 - 3. *Hole depth.* Trees shall be planted so the root collar is level with the soil line or slightly higher.
- b. *Right-of-way landscaping*. Where a parcel abuts a dedicated public right-of- way, landscaping shall be provided in accordance with the following provisions:
 - 1. Right-of-way trees.
 - i. *Quantity*. Trees shall be planted on a maximum 40 feet and a minimum 25 feet spacing such that the total number of trees equal or exceed the ratio of one for each 35 feet of street frontage.
 - ii. Location. Trees shall be planted in the right-of-way along all streets no closer than ten fee from driveways and 40 feet from the corner of an intersection, as measured from the right-of-way lines extended. In addition, no trees shall be planted within ten feet of a fire hydrant or other aboveground public utility.
- (3) *Tree types*.
- a. *Use* of the following trees shall be prohibited in the public right-of-way:

All Ash varieties – European Mountain, Green, White, Black,

etc.

Ailanthus (Tree of Heaven)

Box Elder

Catalpa

Cottonwood (however these are permitted along water edges)

European White Birch

Fruit-bearing Trees (excluding crabapples)

Lombardy Poplar

Mulberry

Russian Olive

Siberian Elm

Silver Maple

Walnut

Willow (however these are permitted along water edges)

Evergreen trees shall be prohibited in the public right-of-way.

Other weak-wooded, messy trees

(4) *Unlawfully planted trees*. Trees, plants or shrubs planted within any right-of-way or vision triangle without the authorization and approval of the Village Arborist may be removed without reimbursement. The Village Arborist shall notify the owner in writing, listing the unlawfully planted trees, plants or shrubs; ordering their removal and establishing a reasonable time within which such removal shall be accomplished. If removal is not accomplished within the 2 weeks specified in writing, the Village may remove such trees, plants or shrubs and assess the costs plus administrative fee thereof to the owner.

(1) Pruning.

- (1) Trees and shrubs standing in or upon public area or upon any private premises adjacent to any public right-of-way or public area shall be kept pruned so that the lowest branches projecting over the public street or sidewalk provide a clearance of not less than 14 feet. The Village Arborist may waive this subsection for newly planted trees if it is determined that they do not interfere with public travel, obstruct the light of any streetlight or endanger public safety (See Sec. 50.100.).
- (2) The necessity of the pruning may be determined by the Village Arborist.
- (3) No cutting or pruning of oaks from April 1st through Oct. 1st is allowed, this is to prevent the initiation or spread of oak wilt prevention.
- (m) Removal of trees and stumps.

- (1) Hazardous, obstructive and infected trees. Any tree or part thereof, whether alive or dead, which the Village Arborist shall find to be infected, hazardous or a nuisance as to endanger the general public or other trees, plants or shrubs growing within the Village or to be injurious to sewers, sidewalks or other public improvements, whether growing upon public or private premises, shall be removed, pruned or treated by the owner of the property upon or adjacent to which such tree or part thereof is located. The Village Arborist shall give written notice to such owner to remedy the situation which shall be served by certified letter. Such notice shall specifically state the period of time within which the action must be taken, which shall be within not less than 24 hours nor more than 2 weeks, as determined by the Village Arborist on the basis of seriousness of the condition of the tree or danger to the public. If the owner shall fail to remove, treat or prune such tree within the time limits, the Village Arborist shall cause the tree to be removed, treated or pruned and shall report the full costs thereof to the Treasurer, who shall there upon enter such costs as a special charge against the property, plus a 25% administrative fee.
- (2) Tree and stump removal standards. In cutting down trees located in public areas, the tree must be removed with the root stump round out to a depth suitable for future planting of trees or turf. All wood and debris must be removed from the street prior to the end of each working day, and all holes shall be filled to normal grade level with topsoil and seed within 2 weeks.

(n) Prohibited acts.

- (1) *Damage to public trees*. No person shall, without the consent of the Village, perform or cause to be performed by others any of the following acts:
 - a. Break, injure, mutilate, deface, kill or destroy any tree or shrub or permit any fire to burn where it will injure any tree or shrub.
 - b. Permit any toxic chemical, gas, smoke, oil or other injurious substance to seep, drain or be emptied upon or about any tree or shrub or place cement or other solid substance around the base of the tree or shrub.
 - c. Remove any guard, stake or other device for the protection of a public tree or shrub; close or obstruct any open space about the base of a public tree or shrub designed to permit access of air, water and fertilizer.

- d. Attach any sign, poster, notice or other object on any tree or fasten any guy wire, cable, rope, nails, screws or other device to any tree.
- e. Cause or encourage any fire or burning near or around any tree.
- f. Place or maintain upon the ground any stone, brick, cement or other impervious substance in such manner as may obstruct the free access of air or water to the roots of any tree, shrub or plant in or upon any public way or public place.
- (o) Appeal from determinations or orders. Any person who receives a determination or order under this article from the Village Arborist and who objects to all or any part thereof shall have the right to appeal such determination or order, subject to article XI of Chapter 2, to the Village Board within seven days of receipt of the order. The Village Board shall hear such appeal within 30 days of receipt of written notice of the appeal. After such hearing, the Village Board may reverse, affirm or modify the order or determination appealed from, and the grounds for its decision shall be stated in writing. The Village Board shall, by letter, notify the party appealing the order or determination of its decisions within ten days after the hearing has been concluded. The Board shall file its written decision with the clerk.

(Code 1999, § 6-4-1, Ord. 3-7-2009)